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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,739	10/22/1999	CHARLES A. PEYSER	07710.0003-0	9954

22852 7590 06/17/2002

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EXAMINER

BONDERER, DAVID A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 06/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/425,739

Applicant(s)

PEYSER ET AL.

Examiner

D. Austin Bonderer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 1999.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 3. 6) ☐ Other: _____

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DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luke et al.

Luke discloses method comprising:

- Storing a set of responses to purchase request for a plurality of providers;
- Including cost;
- Imputing purchase request;
- Providing feedback of service providers capable of fulfilling the order;
- Terminating the session;
- Response is accepted during the session;
- Providers can set preset parameters to approve transactions; and
- The ability to accept during the session.

It has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed limitations. *Ex parte Masham*, 2 USPQ 1964 (1987). The use of the

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invention in the telecommunication services industry is considered intended use and is not germane to the invention.

4. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luke in view of Ausubel.

Luke does not expressly deny or allow access by a service provider during a session to the other responses. Ausubel teaches the denying access to other bids, "a closed bid," and allowing access to other bids "ascending bids." Ausubel teaches that closed bids are very efficient in the amount of time that it takes to complete the process, and that ascending bids allow for a more accurate determination of the market price. These methods are notoriously well known in the art and are taught by Ausubel. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Luke with either a closed or ascending bid process for the reasons stated above.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Walker et al. ('875 and '207), Toyouchi et al., Bouve et al., Kihl et al., Brett et al., Lebda et al., and Levine et al. disclose types of methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Austin Bonderer whose telephone number is 703.306.5911. The examiner can normally be reached on Monday- Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W Coggins can be reached on 703.308.1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687 for regular communications and 703.305.7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.113.


dab

June 11, 2002


WYNN W. COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3800